IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

Writ Petition No. 15632 OF 1997

S.S.Sundaram ..Petitioner

-Vs-

Indian Overseas Bank
rep. by its Chairman
and Managing Director
Central Office
762 Anna Salai
Chennai-2 ..Respondent

Writ Petition preferred under Article 226 of The Constitution Of India
praying for a writ of mandamus as stated therein.

For petitioner :: Mr.C.R.Chandrasekaran
for M/s.Ayyar and Dolia

For respondents :: Mr.Srinivasamurthi for
Mr.N.G.R.Prasad

:O R D E R

The writ petitioner has prayed for the issue of a writ of mandamus directing the respondent-Bank to pay full pension to the petitioner taking into account the increase in qualifying service upto 33 years in terms of Regulation 29(5) of Indian Over Bank (Employees') Pension Regulations, 1995 with effect from the date of the petitioner's voluntary retirement on 20.3.1995 together with interest thereon at 2 4% per annum.

2. The writ petition is taken up with the consent of counsel on either side. Heard Mr.C.R.Chandrasekaran, learned counsel for M/s.Ayyar and Dolia, appearing for the petitioner and Mr.Srinivasamurthy for Mr.N.G.R.Prasad appearing for the respondent.

3. The petitioner claims that he was appointed in the respondentbank which is a nationalised bank. Excepting for a short break in service between 23.2.1963 and 1.9.1964, the petitioner continued in service and was promoted to the cadre of Junior Management Grade Scale-I on 1.6.1982. The petitioner

retired voluntarily on 23.9.1995. Between 1 .3.1965 to 23.9.1995 the petitioner has worked in the respondent bank.

4. On 23.5.1994 the petitioner opted for voluntary retirement due on health grounds. On 23.5.1994 the petitioner made a representation to the respondent to permit him to retire voluntarily due to to his ill health. After a lapse of six months the petitioner was once again required to send a letter. The petitioner by reminders insisted for voluntary retirement due to his health conditions namely heart attack suffered on 19.6.1994 and hospitalised continuously. The petitioner also requested the respondent to consider his son's appointment on compassionate grounds. The petitioner was on loss of pay for 5 + of months.

5. On 9.3.1995 the petitioner intimated the respondent that he was willing to accept premature retirement meaning thereby voluntary retirement irrespective of the implementation of the pension scheme as the Pension Regulations has not been brought into effect at that time.

6. According to the petitioner on 15.3.1995 the respondent advised the petitioner that his request for voluntary retirement has been accepted by the competent authority and that he will be relieved immediately subject to three conditions set out in the said letter. The petitioner was actually relieved on 20.3.1995 at the end of the office hours and the petitioner has been permitted to retired on medical grounds. The petitioner requested the respondent to settle his terminal benefits and persuaded the respondent to sanction the terminal benefits since he is without income. On 3.1.1997 Provident Fund contribution was released after making deductions and on 13.1.197 gratuity amount of Rs.1 lakh was paid as per the pre-revised scale of pay and the balance of gratuity of Rs.41,750/= was paid on 16.6.1997 . The petitioner made an application before the Controlling Authority under the Payment of Gratuity Act as there was some delay in payment of gratuity.

7. The respondent by letter dated 1.7.1997 calculated pension payable to the petitioner without reference to the Pension Regulations 1 995. The Pension Regulations was framed and published after the retirement of the petitioner with retrospective effect from 1.11.1994. As the petitioner has retired on 20.3.1995 he is entitled for pension. In terms of Regulation 29(5) of The Pension Regulations since he had completed 29 years of service, the petitioner is entitled to an increase in the qualifying service by a period of not exceeding 5 years. But what has already been paid is only 29/33 of the Pension payable to him. The petitioner approached the respondent and reminded for settlement difference in pension. It is contended that the refusal to pay the difference in pension is illegal, arbitrary and violative of Art.14. It is contended that the interpretation placed on the Pension Regulations is illegal and unsustainable. Hence the petitioner prays for the issue of a writ of mandamus.

8. The respondent filed a counter. The respondent had taken the

stand that since the petitioner had applied for premature retirement on medical grounds and not on voluntary retirement as prescribed under Regulation 29, he is not entitled for a mandamus as prayed for. It is also contended that the petitioner is not entitled for full pension in terms of Regulation 29, as the case of the petitioner falls within the category of invalid pension and therefore no question of adding five years to his service is permissible. It is also contended by the respondent that the case of the petitioner will not fall under Regulation 29 but under Regulation 30.

9. The only point that arises for consideration is:-

Whether the petitioner is entitled for an issue of a writ of mandamus directing the respondent-Bank to pay full pension in terms of Regulation 29 of the Indian Overseas Bank (Employees') Pension Regulations 1995?

10. Before taking up the point for consideration, it is essential to refer to the very order by which the petitioner has been asked to demit the office. The respondent bank after considering the representations of the petitioner for voluntary retirement on medical grounds imposed three conditions before his being relieved. The said letter reads thus:-

"We refer your representation dated 23.5.1994 seeking premature voluntary retirement on medical grounds. We have now been advised by Central Office that your request for premature voluntary retirement has been accepted by the competent Authority and to relieve you immediately subject to the conditions mentioned below.
1. Appropriation of all your dues, including recovery of Loss of Pay, if any, from your terminal benefits, after obtaining your letter in favour of trustees of Provident Fund.
2. Appointment of your son Shri. S.Sankar in our Bank, will be made after your relief from our Bank, subject to him being found suitable in the interview.
3. Surrender of bank's quarters, Book of Instructions, Identity Card et.,
You are therefore required to call on us and arrange to get relieved after fulfilling the above conditions."

11. On 20.3.1995, the following order was passed relieving the petitioner on premature retirement on medical grounds. The said communication reads thus:-

"Further to our letter dated 15.3.1995, we have to advise having relieved you from our bank's services as at the close of business today (20th Mar'95) on premature retirement on medical grounds. We wish you a happy, prosperous and peaceful retired life".

12. The petitioner's service with the respondent-Bank is governed by the Indian Overseas Bank Officers' service Regulations, 1979. Chapter IX of the Regulations provides for payment of terminal benefits. Regulation 46 speaks of retirement/death/disablement of officers who shall be eligible for gratuity. The Indian Overseas Bank (Employees') Pension Regulations 1995 was

framed in exercise of powers conferred by clause (f) of sub section (2) of Section 19 of he Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Pension Regulations were framed after consultation with the Reserve Bank of India and with the previous sanction of the Central Government by the Board of Directors of the respondent-Bank. Regulation 2 is the definition clause. According to Regulation 1, the regulation shall be deemed to have come into force on the date of publication in the official gazette. Regulation 2 (t) (w) and (y) defines the expressions "pension" "qualifying Service" and "retirement".

13. In terms of Chapter II in the Pension Regulations, applies to the employees who were in service of the respondent-bank on or after the 1st day of January 1986, but had retired before the 1st day of November, 1993. There is no dispute that the Regulations are applicable to the case of the petitioner. Chapter IV of the Regulation prescribes the qualifying service. Chapter V provides for various class of pension. Regulation 28 provides for superannuation pension. Regulation 29 provides for pension on voluntary retirement and Regulation 3 0 provides for invalid pension. Regulation 31 provides for compassionate allowance. Regulation 32 provides for premature retirement pension. Regulation 33 provides for compulsory retirement pension. Chapter VI provides the rate of pension to be calculated under various Regulations. Chapter VII provides for payment of family pension. Chapter VIII provides for computation of pension. Chapter IX prescribes general conditions for payment of pension.

14. Thus, on a reading of the regulations, it could be stated, it is a self contained code. There is no controversy in this respect. To decide the petitioner's claim, it is essential to refer to Regulation No.29 and Regulation No.30 and 32. Concedingly, the respondent has sanctioned pension in favour of the petitioner under Regulation 32, namely premature voluntary retirement pension, which according to the petitioner his retirement will fall under Regulation 23. Regulation 32 provides for payment of premature retirement pension of an employee if he has rendered minimum 10 years of service and retires from service on account of orders of the bank to retire prematurely in the public interest or for any other reason specified therein.

15. A reading of Regulation 32 would show that the petitioner's case will not fall under the said regulation. Regulation 33 provides for compulsory retirement pension. It is not the case of the respondent that regulation 33 will apply to the case of the petitioner. Regulation 31 also will not apply to the case of the petitioner. The counsel for the petitioner rightly relies upon Regulation 29 and contends that the petitioner is entitled for pension on voluntary retirement and his case will not fall under Regulation 30 as it is not an invalid pension. Regulation 29(1) reads thus:-
"(1) on or after first day of November 1993, at any time after an

employee has completed twenty years of qualifying service he ma, by giving notice of not less than three months in writing to the appointing authority retire from service;

16. Regulation 29(2) reads thus:-

"(2) The notice of Voluntary retirement given under sub-regulation(1) shall require acceptance by the appointing authority. Provided that where the appointing authority does not refuse to grant the permission or retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

17. Regulation 29(3) reads thus:-
(3)(a) An employee referred to in sub regulation(1) may make a request in writing to the appointing authority to accept notice of Voluntary Retirement of less than three months giving reasons therefor;
(b) On receipt of a request under Clause (a), the appointing authority may, subject to the provisions of sub regulation (2) consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that an employee shall not apply for commutation of a part of his pensions before the expiry of the notice of three months.

18. Clause (4) and (5) of Regulation 29 prescribe the procedure. In terms of Clause (6) of Regulation 29, pension of an employee retiring under Regulation 29 shall be based on average emolument as defined under Clause (d) of Regulation 2 of the Pension Regulations and the increase not exceeding five years in his qualifying service, but shall not entitle him to any notional fixation of pay for the purpose of calculating pension. Therefore in terms of Clause (6) of the Regulation 29, a person who has retired on voluntary retirement is entitled to maximum of five years in addition to the service rendered by him. Clause (6) reads thus:-
(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under Clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension."

19. Before coming into force of the said Regulations apparently there was no provision for voluntary retirement or for invalid pension. A perusal of the correspondence between the petitioner and the respondent-bank would show that the petitioner opted for voluntary retirement due to health reasons. The petitioner satisfies Regulation 29 . Though the petitioner has used the expression premature retirement in effect it is a voluntary retirement on health grounds. Therefore it is clear that the petitioner's case will fall under Regulation 29. The contention advanced on behalf of the respondent that the petitioner's case will fall under Regulation 30 and therefore he is not entitled for additional 5 years cannot be sustained. Regulation 30 provides for grant of invalid pension, if the individual officer has rendered minimum ten years of service and if he retries from service on or before 1st day of November, 1993 on account of any bodily or mental infirmity, which permanently incapacitate him for the service.

20. Though Mr.Srinivasamurthi, learned counsel appearing for the

respondent contended hat the petitioner's case will fall under Regulation 30 as it is an invalid pension on medical grounds, this court will not at all be justified to sustain the said contention as the case of the petitioner falls under Regulation 29 and not under Regulation 30. To apply Regulation 30, the termination should be by way of invalidation from service. On a conspectus reading of the above regulations, the construction placed by the consel for the writ petitioner deserves to be sustained as the same reflects the object and purpose behind the said Regulation.

21. In the circumstances, the writ petition is allowed and there will be a direction to the respondent to consider the case of the petitioner for sanction of additional five years of service eligible for pension payable in terms of Regulation 29(6) of the Indian Overseas Bank (Employees') Pension Regulations 1995 and disburse the benefits within a period of three months from the date of communication of this order. If the benefits are not paid within three months from the date of this order, the respondent Bank shall be liable to pay all arrears of pension with interest at 12% per annum from the date of retirement and till date of disbursement. The parties shall bear their respective costs.

Index:Yes
Internet:Yes
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To
Indian Overseas Bank
rep. by its Chairman
and Managing Director
Central Office
762 Anna Salai
Chennai-2